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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,843	11/12/2003	Barnaby Henderson	05-03-003	6087

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EXAMINER

RAYYAN, SUSAN F

ART UNIT	PAPER NUMBER
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2167

MAIL DATE	DELIVERY MODE
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01/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/706,843

Applicant(s)

HENDERSON ET AL.

Examiner

Susan F. Rayyan

Art Unit

2167

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. However, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action, as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☒ Applicant's reply has overcome the following rejection(s): claims 3-4, 8-9, 13-14 rejected under 35 USC 101.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: _____
Claim(s) withdrawn from consideration: _____


AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____


JOHN COTTINGHAM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100


Susan Rayyan
January 11, 2007

Status of the claims are as follows:

Claims rejected: 1-2,6-7,11-12 .

Claims objected to : 3-4, 8-9, 13-14 .

Claims withdrawn from further consideration: 5,10,15.

Response to Applicant's arguments concerning the rejection of claims 1 -4, 6-9,11-14 under 35 U.S.C. 101 as directed to non-statutory subject matter.

Applicant argues "Examiner alleges that because some test results are discarded the claimed process has no tangible results" and "the Examiner's analysis does not consider the results of the claimed process as a whole". Examiner respectfully disagrees with the Applicant's interpretation of the cited argument and with the Applicant's argument that the claimed process was not treated as a whole. Examiner addressed these same arguments in the Final Office Action mailed on October 16, 2006 (see pages 6 -7).

Applicant argues "In the sort of real-world example the Examiner appears to require, if only the same set of tests are run, then there will be no "inevitable possibility" that there will be no matching test identifier, and every comparison will result in either a modification of a record, in the event of different results, or no modification, in the case of matching results." Examiner agrees that claims 1,6,11 provide for just this situation however the independent claims do not provide a real world result when a comparison between the test result record and the compiled test result record results in "no matching test identifier". Examiner has reviewed the specification and found in paragraph 38 of the specification "A search is made of the temporary table for records that have a test name without a match in the main table. If such records are found then they are added to the main table". Claims 3 -4, 8-9, 13-14 provide for a comparison result indicating "no matching test identifiers" and the Applicant has argued with regard to claims 3 -4, 8-9 and 13-14, the dependent claims "provide for just very possibility that the Examiner complains is missing from the independent claims". The Applicant admits a comparison between the test identifier and the compiled test result record can result in a "no matching test identifier". Taking into consideration the citation in the specification, the claims and Applicants' admission, the Examiner finds the missing comparison step an integral part of the method for storing test results in a database. Each possible branch of the decision tree within the claim must be addressed and each branch must be statutory in order for the claim to be statutory. The rejection of claims 1 -2,6-7,11-12 under 35 USC 101 directed to non-statutory subject matter is maintained.

Examiner agrees with the Applicant's arguments concerning the rejection of claims 3 -4, 8-9, and 13-14 under 35 USC 101. The rejection has been withdrawn.